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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)
	) CC Docket No. 94-129
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)

COMMENTS OF CABLE AND WIRELESS USA, INC.

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SUMMARY

Cable & Wireless USA, Inc. ("C&W USA") submits the following comments to the Commission's Further Noticed of Proposed Rulemaking. C&W USA supports several of the Commission's proposals that will further the public interest by streamlining procedures and regulatory burdens. However, C&W USA strongly opposes several Commission proposals that do not regulate carriers on a level playing field or that create new regulatory requirements without proper justification.

C&W USA strongly urges the Commission to embrace e-commerce and permit carriers to send and accept authorized letters of agency via the Internet. Internet LOAs are clearly within the public interest since they will provide consumers with protection from slamming and will decrease costs for both carriers and consumers. The Administration and other Federal agencies have embraced e-commerce by allowing and encouraging the Internet as a means to transact government business. C&W USA believes the Commission's rules as presently written can be reasonably interpreted to permit carriers to use Internet LOAs as an acceptable means of verification. The issue of what constitutes a signed written document when delivered electronically has been debated in other forums, providing the Commission with substantial precedent on this issue. Alternatively, if the Commission decides its rules must be amended in order to accommodate Internet LOAs, then the uniform laws and state legislative initiatives also provide precedent in properly amending their statutes. Finally, C&W USA requests the Commission to preempt conflicting state laws that may interfere with the viability of Internet LOAs. State and jurisdictional boundaries are not recognized by the Internet, and the Commission should ensure no one jurisdiction can preclude consumers from

enjoying the efficiencies and benefits of this medium while contracting for telecommunications service.

C&W USA also supports the Commission's proposal to address problems caused when switchless resellers are identified exclusively through the carrier identification code of their underlying facilities-based carriers. The Commission proposed option assigning switchless resellers "translations access," a CIC identifier without the Feature group D trunk, appears to be the most feasible and cost effective option. Other suggested remedies to this problem do not provide resellers with the uniform identification necessary and could inappropriately shift much of the cost burden to the facilities-based carrier.

C&W USA, however, strongly disagrees with several Commission proposals in this proceeding. Increasing the amount recovered from an unauthorized carrier in the event of an unauthorized preferred carrier change, is premature since the rules enacted in the Second Report & Order have not become effective and have not withstood the inevitable scrutiny expected in other forums. The micromanagment of third party verification mechanisms and definition of and liabilities associated with a "subscriber," are also strongly opposed by C&W USA. Both of these proposals appear to be unnecessary and no direct evidence was provided in the Further Notice that these changes were necessitated by the public interest. Finally, C&W USA opposes the Commission's reporting and registration requirements included in the Further Notice. As proposed, the reporting requirement will not result in the Commission acquiring reliable information that can be used as an "early warning system." Finally, any registration requirement enacted by the Commission should not include additional unnecessary costs or burdens on carriers.

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COMMENTS OF CABLE AND WIRELESS USA, INC.

Cable & Wireless USA, Inc. ("C&W USA") submits the following Comments to the Commission's proposed rule in the above entitled docket.[1] C&W USA strongly advocates that the Commission permit letters of agency be executed and submitted over the Internet. C&W USA also supports the proposals that resellers be identified by means other than an underlying carrier's identification code, and a third party administrator should be explored for preferred carrier ("PC") changes, freezes, and disputes. On the other hand, C&W USA requests the Commission reject proposals to increase the liability for unauthorized changes, to expand the responsibilities of independent third party

[1] Implementation of the Subscriber Carrier Selection Changes Provision of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129, released Dec. 23, 1998 (hereinafter "Second R&O and Further Notice").

verifiers, and to mandate carriers determine which agent of a business or household has the proper authority to make telecommunications decisions.

I. THE COMMISSION SHOULD DECLARE CARRIER CHANGES USING THE INTERNET ARE IN THE PUBLIC INTEREST, PROMOTE ELECTRONIC COMMERCE, AND ARE PERMISSIBLE UNDER ITS RULES.

In the Second R&O and Further Notice, the Commission tentatively concluded that letters of agency ("LOAs") over the Internet do not conform with its current rules[2] and seeks comment on whether additional information requirements could provide consumers sufficient protection from an unscrupulous carrier.[3] The Commission is concerned that a process allowing consumers to purchase telecommunications services over the Internet may not satisfy the Commission's current rules requiring a written signature due to the inability of an electronic signature to properly identify the signer as the individual who is authorized to make such a decision. The Commission proposes adopting regulatory verification methods, such as the subscriber's credit card number, a social security number, or mother's maiden name, to verify the electronic signature.

Many carriers are currently using the Internet to solicit and acquire new customers. In order to actually purchase service, some carriers require the potential subscriber to print out the LOA delivered via the Internet, sign, and return an LOA form by facsimile or traditional mail. While this scenario uses the Internet as an efficient means to deliver the required information to the potential subscriber, it still relies on an outdated and administratively burdensome delivery regime to accomplish the consumer's wishes. Some other carriers allow potential subscribers to forward the completed form

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[2] Id. at 171.
[3] Id. at 172.

electronically to the carrier's web site. This system embraces electronic commerce to deliver the LOA and allows potential subscribers to complete, sign, and deliver the form to the carrier in an efficient and streamlined manner. However, it may also put the carrier at risk of violating the Commission's rules.

A. INTERNET LOAS SHOULD BE RECOGNIZED AS PERMISSIBLE BY THE COMMISSION.

C&W USA believes the efficiencies of the Internet LOA for both the carrier and the consumer are clearly in the public interest and the Commission should recognize this as a permissible means to verification. Further, C&W USA believes that LOAs delivered, completed, authorized, and submitted exclusively through the Internet ("Internet LOAs") are already compliant with the Commission's present rules since they are signed, written documents that include pertinent information as specified in the rules. In the alternative, if the Commission concludes that its rules need to be amended in order to permit Internet LOAs, the revisions should be narrowly tailored in a manner consistent with the policy objectives promoting electronic commerce.

1. INTERNET LOAS ARE CLEARLY IN THE PUBLIC INTEREST.

Essentially, the Commission must make a choice between embracing the convenience and security provided by new technologies and demanded by consumers versus holding onto the familiar traditions of the past. For Internet LOAs to offer customers and carriers the full convenience and efficiencies that are available, they must be delivered, completed, signed, and submitted exclusively through the Internet. If any of these steps requires an intervening manual event, such as a follow-up letter or phone

call, the convenience and efficiencies of the electronic transaction would be lost. It would be truly ironic if the telecommunications industry, one of the most recognizable symbols of the Information Age, was unable, by regulatory fiat, to provide its customers with the full benefits of information technology.

Internet LOAs are in the public interest because they efficiently execute preferred carrier changes in a manner that benefits both the consumer and the carrier. When executing an Internet LOA, the consumer will not be subject to undue influence from overzealous telemarketers or sales personnel. The consumer will have the opportunity to print out and read the LOA, taking his or her time in making a deliberative decision of whether to change preferred carriers. When provided in manners as suggested in these Comments, the electronic signatures that demonstrate authorization by the consumer may be more secure than traditional signatures or third party verification. Finally, these efficiencies will reduce costs to carriers associated with acquiring customers, resulting in increased competition and reduced prices for consumers.

2. PUBLIC POLICY SUPPORTS THE RECOGNITION OF INTERNET LOAS.

The U.S. Government has embraced a policy whereby the private sector leads in the development and use of the Internet and the government assists by eliminating undue restrictions in electronic commerce.[4] In 1997, President Clinton issued the Presidential Directive on Electronic Commerce with principles to guide executive departments and

[4] President William J. Clinton & Vice-President All Gore, Jr., A Framework for Global Electronic Commerce at 3 ("Framework") (visited Jan. 22, 1999) http://www.iitf.nist.gov/elecomm/ecomm.html . [Emphasis Added].

agencies when addressing electronic commerce issues.[5] These principles require the Federal government to refrain from imposing any new and unnecessary regulations on commercial activities that take place on the Internet as well as revise existing rules and regulations that may hinder electronic commerce.[6] In its Framework for Global Electronic Commerce, the Administration expressed its support for electronic commerce and requested governments and standards setting bodies eliminate administrative and regulatory barriers by recognizing electronic contracts and authentication procedures.[7]

The U.S. Congress has also undertaken an active role in legislating support for electronic commerce and directing Federal agencies to employ these tools in their everyday functions. In the 105th Congress, two legislative initiatives were enacted that embraced the Internet as an effective and secure tool to conduct government business. In the Government Paperwork Elimination Act, Congress mandated that electronic signatures and records shall not be denied legal effect, validity, or enforceability because they are in electronic form.[8] In an Act to reform the Internal Revenue Service, Congress provided that a tax return filed electronically shall be treated as signed and subscribed.[9] In the 106th Congress, several bills are pending that would demand federal agencies recognize electronic documents and signatures as having the same legal effect as a standard document that has been manually signed.

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[5] Presidential Directive for Electronic Commerce (visited Jan. 28, 1999) http://www.ecommerce.gov.presiden.html.
[6] Id.
[7] See Framework, supra n. 4, at 8.
[8] Pub. L. 105-206.
[9] Id.

3. INTERNET LOAS ARE PERMISSIBLE UNDER THE COMMISSION'S PRESENT RULES.

The Commission should declare its current rules permit LOAs that are completed over the Internet. The Commission's LOA rule requires a written form signed by the subscriber that includes pertinent information, but the rule is not specific as to the medium used to deliver the LOA to the customer and how the customer actually signs and submits the LOA.[10]

The signed writing requirement of the LOA is comparable to the same requirements found in contracts governed by the Statute of Frauds. The purpose of a written and signed contract is to provide evidentiary support to a party asserting a claim under the contract; in this case, a carrier using the signed LOA in reply to a fraud or slamming accusation. Similar to the Commission's LOA rules, the Statute of Frauds denies enforcement of certain contracts that are unsupported by signed writings. The foremost aim of the Statute of Frauds is to create evidence to assist a court in determining a contract's existence when, for example, a dispute as to the contract itself or the parties' assent to the contract arises.[11]

For years, courts, legislators, and other administrative agencies have been addressing the issue of what is a signed writing and whether the signed writing requirements of the Statute of Frauds are satisfied through electronic transmission. The Commission should rely on the record created by court precedent addressing contracts and electronic commerce to declare that LOAs offered, accepted, signed, and submitted over the Internet are valid under its current rules. Courts throughout the United States

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[10] See Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995) ("1995 Report and Order").

have used their discretion to liberally recognize different means by which written contracts can be offered, accepted, and delivered between parties.[12] A signature, for example, has been held to be any mark or symbol affixed to a writing which manifests the signer's intent to adopt it as his or her own and to be bound by it.[13] It need not be the full or partial name of the signer placed at the end of the text. Instead, intent may be manifested through an initial, mark, typewritten name, stamp, or identification number.[14] The signature does not have to be handwritten, it can be made with a rubber stamp, printed, lithographed or engraved.[15] As early as 1869, the New Hampshire Supreme Court held that when a contract is made by telegraph, it constitutes a contract in writing under the Statute of Frauds.[16] Likewise, twentieth century technology, such as the telex, mailgram, and fax, have also been held to meet these signed writing requirements.[17] Other federal regulatory agencies have addressed similar issues and have concluded that legal signed writing requirements are satisfied through electronic transmission.[18]

The electronic verification mechanisms used to comply with the signed writing requirements in other forums should satisfy the current rules. The Commission should allow all reasonable verification means to satisfy the signature requirement for LOAs through the Internet, including but not limited to, credit card numbers, passwords, and place of birth. So long as the electronic signature demonstrates acceptance of the

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[11] Benjamin Wright & Jane K. Winn, The Law of Electronic Commerce, §14.04 (3d ed. 1998) ("LEC")
[12] Id.
[13] Jane Kaufman Winn, Open Systems, Free Markets, and Regulation of Internet Commerce. 72 Tul. L. Rev. 1177, 1216 (1998) ("Open Systems").
[14] See LEC, supra n. 11, at 1404.
[15] See Open Systems, supra n. 13.
[16] Howley v. Whipple, 48 N.H. 487 (1869).
[17] See LEC at §14.05.
[18] Id.

contract and can be verified in the event of a dispute, the Commission should recognize it as an acceptable means to signing an LOA.

The Commission's other concerns with Internet LOAs, such as accidental carrier changes while visiting web sites, may also be satisfied without amending its present rules. The Commission's rule requires that LOAs be separate, or easily separable, from any inducements to switch carriers, include pertinent information concerning the subscriber, be clearly legible, and use a consistent language throughout the document.[19] There is no reason the Internet cannot comply with each of these requirements. The electronic LOA form that the subscriber completes and signs can be placed on a separate screen page from any screen page containing an inducement, pertinent information would be required before the LOA could be submitted to the carrier's web site, and all terms and conditions would be clearly legible. Internet LOAs, in fact, actually provide increased consumer protection against unscrupulous carriers. For example, since the subscriber could be precluded from submitting the Internet LOA until all required information is provided, consumer protection is enhanced because the human error factor has been substantially reduced. Also, the consumer would not be subject to the high pressure marketing tactics often present in the sales and telemarketing practices of unscrupulous carriers, thus making the decision completely on his or her own initiative.

4. ALTERNATIVELY THE COMMISSION SHOULD AMEND ITS RULES TO PERMIT INTERNET LOAS.

If the Commission concludes that its rules as presently written are insufficient to recognize the validity of electronic signatures and Internet LOAs, then the Commission should use this docket to revise its rules in a manner that permits consumers to subscribe

to telecommunications services over the Internet. The Commission's hesitance to declare Internet LOAs as compliant with the present rules is based on the apparent inability of a telecommunications carrier to authenticate a subscriber's signature submitted over the Internet. For customers subscribing to a service in which they do not have a prior relationship with the telecommunications carrier, the Commission should examine changes made to certain uniform laws and state statutes addressing the electronic authentication issue. For customers that have a prior relationship with the telecommunications carrier and use the Internet to change, add, or eliminate service, the Commission should recognize that the subscriber and the carrier can predetermine the most efficient and accurate electronic authentication mechanism for these purposes.

a. UNIFORM AND STATE LAW AMENDMENTS PROVIDE A SUBSTANTIVE RECORD.

Uniform laws, which are the basis for many state and local laws governing commerce, are being reviewed and amended in order to recognize the growth in electronic commerce. The National Conference of Commissioners on Uniform State Laws ("NCCUSL") and the American Law Institute have appointed drafting committees to prepare revisions to Articles 1, 2, 2A, 2B, and 9 of the Uniform Commercial Code in order to ensure electronic commerce is recognized. Among the changes being considered are the substitution of the term "record" for the term "writing" and the term "authenticated" for the term "signed" to provide electronic contracts with the same legal effect as traditionally written contracts.[20] While these changes may not be legally

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[19] See 1995 Report and Order, supra n. 10. Codified at 47 CFR §64.1150, amended by Second R&O and Further Notice, supra n.1.

[20] See Open Systems, supra n. 13, at 1236.

necessary for electronic commerce to satisfy these laws, they represent the drafter's intent to eliminate any misunderstandings as to the validity of electronically formed contracts.

The NCCUSL is also drafting a Uniform Electronic Transactions Act ("UETA") to govern all electronic records and signatures that are not specifically addressed by other uniform laws or that are specifically excluded by statute or regulation. The UETA declares that electronic records, electronic signatures, and electronic contracts should not be held invalid solely because they are electronic in form. Security of these electronic messages is addressed by requiring the use of algorithms or other codes, identifying words or numbers, encryption, callback, or other acknowledgment procedures, or any other procedures that seem reasonable under the circumstances.[21] The UETA provides a thorough record of how electronic signatures and contracts can be verified and made enforceable.

About 40 states have either enacted or are considering some form of legislation dealing with state-law requirements of signed writings in the electronic commerce context.[22] These revisions vary from the strict Utah model requiring an encrypted digital signature to a more liberal approach in Georgia and Florida. The Florida law addresses issues similar to the Commission's Internet LOA issue, and this statute recognizes the validity of electronic messages bearing any form of an identifying symbol.

If the Commission determines its rules must be changed in order to accommodate Internet LOAs, then it should examine the record created by the NCCUSL and the various states in confirming the validity of electronic signature and contracts. The uniform and state laws have recognized that signatures and writings do not have to be

[21] R.J. Robertson, Jr. Electronic Commerce Over the Internet and the Statute of Frauds, 49 S.C.L.Rev. 787, 828 (1998).

confined to their traditional forms. Instead, these laws embrace electronic commerce and make the necessary adjustments to ensure electronic contracts are attributable and enforceable without requiring burdensome verification requirements. In the case of the current LOA rules, the Commission could employ the UCC's proposals and substitute "record" for "written authorization"[23] and "authenticated" for "signed and dated"[24] to ensure Internet LOAs are attributable to the subscriber and enforceable.

b. Any Amendments to the Commission's Rules Should be Narrowly Tailored, Commercially Reasonable, and Minimally Burdensome to All Parties.

Any new rules should require electronic signatures be as verifiable as standard signatures, yet not subject carriers or consumers to a significantly increased burden. When a telecommunications carrier receives a standard signature on an LOA, it relies on this as the subscriber's intention to change presubscribed carriers. The carrier and subscriber have no expectation or requirement to verify the signature prior to the LOA being effective. Likewise, electronic signatures should be required to be verifiable by the carrier but should not be subject to a rule requiring prior verification. In the Second R&O and Further Notice, the Commission recognized this important distinction and suggested Internet LOAs could be acceptable if certain information, such as the subscriber's mother's maiden name, credit card number, or social security number, was required to make the authorization verifiable.

The Commission should not proscribe acceptable verification methods but should rely on the commercial market to determine what is reasonable and verifiable. It is in the

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[22] Id.; see also http://www.mbc.com.
[23] See 47 CFR §64.1160(b).
[24] Id.

carrier's best interest in guarding against slamming or fraud accusations to ensure the Internet LOA is attributable to the subscriber. Carriers, however, should retain the flexibility to choose which verification method works best for them and their customers. If the Commission decides to adopt rules concerning verification of Internet LOAs, it should merely adopt a rule requiring carriers to implement some form of electronic verification rather than adopting a rule that rigidly dictates a uniform standard for verification. Such a burdensome rule would have the unintended consequence of impeding the use of new and innovative verification techniques as e-commerce matures.

Further, any change to the rules should recognize that once the carrier and the customer have an established commercial relationship, then the Commission's need to regulate their interaction is significantly diminished. A current subscriber to a telecommunications carrier's interLATA service, for example, should be allowed to visit the carrier's web site to subscribe to intraLATA or local exchange service by using verification means predetermined by the carrier and the subscriber, not mandated by the Commission. When a prior relationship exists, verification could include an account number, password, e-mail address, or the identifying characteristics included in all Internet transactions.

B. THE COMMISSION SHOULD PREEMPT CONFLICTING STATE LAWS GOVERNING INTERNET LOAS.

Regardless of whether the Commission declares Internet LOAs are permissible under the current rules or through amendments to these rules, the Commission should preempt any conflicting state laws as to the legality and form of Internet LOAs. In its

Second Report & Order ("R&O") and Further Notice,[25] the Commission correctly recognized that states must write and interpret their statutes and regulations in a manner that is consistent with the Commission's rules and Section 258 of the Act.[26] Internet LOAs provide a much more compelling argument for preemption than the verification and liability issues addressed in the Second R&O and Further Notice. The Internet does not recognize state boundaries or other jurisdictional distinctions, and any attempt by the states to enact conflicting regulations would be confusing to the consumer and difficult for the carrier to successfully comply. Because of this, one state could dictate a carrier's Internet LOA policy on a national, rather than just a statewide, basis. Clearly, the Commission must ensure that a state is unable to exercise its power outside of its jurisdiction.

II. THE COMMISSION SHOULD REMEDY RESELLER MISIDENTIFICATION PROBLEMS.

C&W USA urges the Commission to act on its proposal to assist carriers in the proper identification of resellers. This requirement would lessen the opportunity for "soft slams" amongst resellers of the same facilities-based carrier and would more accurately expose which carriers are incurring slamming complaints. C&W USA strongly believes the Commission, other regulatory bodies, consumers, and carriers would benefit from a system that can efficiently and properly identify the carrier that has engaged in conduct resulting in an unauthorized preferred carrier change. The present situation is unacceptable and results in many facilities-based carriers being wrongfully accused of engaging in such anticompetitive conduct.

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[25] See Second R&O and Further Notice, supra n.1.

A. RESELLER RELIANCE ON THE UNDERLYING CARRIER'S CIC IS OUTDATED AND MUST BE ADDRESSED.

In the Second R&O and Further Notice, the Commission properly recognized that consumer confusion has developed when carriers provide service through the resale of an underlying facilities based carrier.[27] Since switchless resellers do not purchase Feature Group D ("FGD") trunk access from the local exchange carrier, they are not assigned separate carrier identification codes ("CICs") and must use the CICs of their underlying facilities-based carriers. This reliance on the facilities-based CIC has created confusion, resulted in undetectable "soft slams," and has improperly assigned liability for slamming complaints. The Commission requests comment on three proposals to address these problems: (1) resellers could be assigned CICs without purchasing FGD access ("translations access"); (2) resellers could be assigned "pseudo-CICs" that differentiate them from other carriers reselling service from the same facilities-based carrier; or (3) additional requirements could be placed on facilities-based carriers to prevent soft slams and to assist in the identification of resellers.

As a carrier that provides service for switchless resellers, C&W USA has first-hand knowledge of problems caused by carrier misidentification. C&W USA identified and discussed the issue of reseller CIC reliance and misidentification as a problem in its Comments to the Further Notice & Order in 1997,[28] and this problem has since compounded. Most of the slamming accusations C&W USA receives from the

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[26] Id. at 89.
[27] Id.
[28] Implementation of the Subscriber Carrier Selection Changes Provision of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers,

Commission or state regulatory bodies misidentify C&W USA as the carrier that submitted the PC change, when in fact a carrier reselling C&W USA's underlying service is actually responsible. This consistent error occurs when the LEC identifies the underlying carrier's CIC as the slammer to the consumer, even though it is the resale carrier that requested the change and is actually providing the service.

B. THE COMMISSION SHOULD ADOPT THE MOST COST EFFECTIVE REMEDY TO ADDRESS THE PROBLEMS OF RESELLER CIC RELIANCE.

The Commission should adopt the most cost effective remedy to the problems created when the switchless resellers of an underlying facilities-based carrier are misidentified through reliance on the CIC. Of the Commission's three proposals, C&W USA strongly believes that the translations access method is the most capable and cost effective solution. There are issues with the psuedo-CIC option that could create more problems than are solved, and the option requiring facilities-based carrier modify their systems should be abandoned since it does not recognize that facilities-based carriers are presently bearing extraordinary costs for this problem. Moreover, the Commission should ensure that any change to the CIC system does not require switchless resellers to purchase FGD trunk access. This would significantly increase cost for most resellers, resulting in some going out of business, and could increase the cost of service for consumers.

Resellers obtaining "translation" access by purchasing Feature Group D identification from the LEC is a reasonable option; however, the North American Numbering Plan Administrator ("NANPA") and the Commission should underscore the

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Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10,674 (1997) ("Further Notice and Order").

premise of identification as the sole purposes for this concept. Accordingly, the cost incurred by the reseller in obtaining translation access should be apportioned at a rate substantially less than the cost incurred by facilities-based carriers for Feature Group D trunks. Presently, the cost of reseller CIC reliance is borne almost exclusively by the underlying carrier. Any new cost for translation access would actually be a cost shift from the underlying facilities-based carrier and would properly be the responsibility of the reseller.

C&W USA has reservations concerning the option for underlying carriers to create psuedo-CICs. First, this option does not create the uniformity in reseller identification that translation access provides. In order to properly identify resellers, the methods employed must be uniform throughout the system. Otherwise, new, unforeseeable problems could be created by this remedy. Second, this alternative would require systems and billing changes at both the LEC and IXC levels, resulting in unnecessary costs when compared to the translation access option. IXCs would need to create and update designated psuedo-CICs for all associate resellers and provide the information to the LEC on a regular basis. Additionally, the LEC would be forced to change its operating system to accommodate the extra three-to-four digits, incurring both capital and administrative expenses.

III. THE COMMISSION SHOULD REJECT ITS PROPOSAL MANDATING THE RECOVERY OF ADDITIONAL AMOUNTS FROM UNAUTHORIZED CARRIERS.

In the Second R&O and Further Notice, the Commission seeks comment on a proposal mandating unauthorized carriers remit to the authorized carrier an amount equal

to double the amount collected when the subscriber has paid charges or an amount equal to what the subscriber would have been billed when the subscriber has not paid charges.[29] The Commission states this would additionally compensate the authorized carrier when the subscriber has not paid, and, when payment for the unauthorized charges has been received, this would enable the subscriber to receive a payment in addition to the service charges that have been waived by the unauthorized carrier. The Commission requests comment on its proposal and on its statutory authority to require such additional payments. The Commission tentatively concludes that Sections 258, 201(b), and 4(i) of the Communications Act provide the authority to enact such a system, and this proposal would provide an added deterrent to unscrupulous carriers.

Cable & Wireless USA strongly urges the Commission to reject this proposal for statutory and public policy reasons. First, Congress specifically envisioned a system where an unauthorized carrier would "...be liable to the carrier previously selected by the subscriber in an amount *equal* to the charges paid by such subscriber after such violation."[30] While the statute does recognize the Commission has additional authority to provide *other* remedies available by law,[31] the statute specifically describes the amount of compensation that should be exchanged between carriers in the event of a violation. The Commission's reliance on the general enforcement and administrative authority found in Sections 201(b) and 4(i) to enact such a proposal would conflict with the express terms specified by Congress in Section 258(b). The Commission cannot rely on its general administrative powers to finalize a rule that conflicts with the express statutory language found in the Communications Act.

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[29] Second R&O and Further Notice, supra n.1, at 141, 142.
[30] 47 USC §258(b).

Second, the Commission should reject this proposal for public policy reasons. In the Second R&O and Further Notice the Commission changed its 1995 policy of ensuring consumers are made whole by unauthorized carriers[32] to a system where the consumer and the authorized carrier receive a benefit from the unauthorized switch in the form of free service and revenue without cost, respectively, and the unauthorized carrier is punished for its acts.[33] The proposed increase in liability would be premature since the policy enacted in the Second R&O and Further Notice has not even taken effect. Further, the new policy may be challenged in other proceedings and forums, and the Commission should evaluate how its new liability system withstands this inevitable scrutiny and how it impacts carriers and consumers before enhancing these liabilities.

IV. THE COMMISSION SHOULD NOT MICROMANAGE INDEPENDENT THIRD PARTY VERIFICATION OR PLACE ADDITIONAL RESPONSIBILITIES ON THE VERIFIERS.

In the Second R&O and Further Notice, the Commission enacts and proposes rule changes to better ensure that the third party verification ("TPV") process is truly independent of the carrier seeking to become the subscriber's authorized carrier.[34] The Commission seeks to build on its third party verification clarifications included in the Second R&O and Further Notice by proposing third party verification be further regulated and the verifier's duties be expanded. While Cable & Wireless USA agrees with the Commission that any third party verifier should be truly independent of the carrier, it opposes the Commission's proposed rules that would micromanage TPV and possibly mandate responsibilities that are not directly related to the verification process.

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[31] Id.
[32] 1995 Report and Order, supra n. 10, at 9579.
[33] See Second R&O and Further Notice, supra n. 1.

The Commission should not accept the National Association of Attorney Generals's ("NAAG") proposal to eliminate the three-way call as a means to accomplish third party verification. Of the Commission's three present means to properly verifying a preferred carrier change, third party verification is the most costly option in the terms of time and expense. Carriers using this option must contract with a separate, independent verifier whose costs include compensating and training personnel to handle these calls as well as recording all conversations with subscribers. The Commission is correct in recognizing a three-way call is often the most efficient means by which to accomplish third party verification. If the consumer feels he or she did not understand the carrier's offer or wants to reject the offer to switch carriers, then he or she has the opportunity to reject by terminating the conversation or not providing the required information to the third party verifier during the three-way call.

The Commission should declare that innovative and efficient means to accomplish third party verified preferred carrier changes, such as automated systems, are permissible under its rules. Verification rules should be proscribed in a manner that obligates carriers to ensure the consumer makes an informed decision to subscribe to the carrier's service. The private sector and marketplace has and will develop innovative means to comply with these rules in a manner that meets and effectuates the Commission's goals.

Further, the Commission should not delegate duties to third party verifiers that are ancillary to the verification function. Dispensing information concerning the services offered by the carrier and preferred carrier freeze procedures are not within the scope of the verifier's duties and responsibilities. Moreover, providing the verifier with certain

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[34] Id. at 69.

carrier information could affect the third party verifier's independence and objectivity and could result in proprietary information being disclosed to competing carriers. Permitting third party verifiers to describe preferred carrier freeze procedures is also beyond the scope of the verifiers duties and could cause unforeseen problems in competitive local markets and when the Bell companies are permitted to enter the interLATA market.

V. THE COMMISSION SHOULD NOT REGULATE THE DEFINITION OF SUBSCRIBER.

Cable & Wireless USA supports SBC's definition of "subscriber" as included in its comments to this docket and urges the Commission to reject regulatory mandates on determining authorized subscribers in homes and businesses. C&W USA believes it is the responsibility of the principal, whether a household or a business, to designate agents who have the authority to make telecommunications decisions on behalf of that principal. The Commission is concerned that persons not authorized to make telecommunications decisions on behalf of a household or a business are ordering these changes regardless. However, this concern is not supported by any evidence demonstrating a problem for consumers or carriers and appears to be justified exclusively on hypothetical scenarios. The Commission has not clearly demonstrated that regulatory interference is warranted.

Delegating the responsibility of determining who is the authorized subscriber for a household or business to carriers is unnecessary, could be extremely burdensome on all parties, and could result in increased fraudulent behavior. First, this rule is unnecessary since it is the responsibility of the principal to delegate subscriber authority to an agent and to ensure no other agent interferes with the execution of these duties. The carrier will

have no knowledge or any readily available means to acquiring such knowledge of who is the properly designated person to make decisions concerning telecommunications service. Further, under the Commission's new strict liability rules for an unauthorized change in providers, carriers will make an increased effort to confirm that the person authorizing the change has the necessary authority to make such a decision. Second, regulatory guidance in this area, in order to be effective, will be extremely difficult to develop and enforce. Demanding a subscriber's current carrier provide subscriber authorization information to competing carriers would require substantial guidance and oversight from the Commission. Disclosure mechanisms, CPNI restrictions on subscriber information, etc., would have to be considered in a rulemaking to determine how this would be enforced. Third, placing the burden of determining the authorized subscriber on carriers would invite fraud and abuse of the Commission's remedies for an unauthorized preferred carrier change. Since these rules employ a strict liability standard, carriers would be held liable for changes when an unauthorized agent fraudulently verifies the change in telecommunications providers and the properly authorized agent subsequently files a slamming complaint. This fraud could be perpetuated repeatedly.

The current practice among carriers is for the party signing the LOA or accepting service through third party verification to acknowledge that he or she has the authority to make telecommunications decisions on behalf of the principal. Cable & Wireless USA is not aware of these declarations being a significant problem at this time and urges the Commission to refrain from regulating in this area unless actual evidence is produced on the record justifying the necessity for such action.

VI. THE PROPOSED REPORTING REQUIREMENT WILL NOT PROVIDE THE COMMISSION WITH THE ACCURATE, USEFUL DATA IT SEEKS.

In the Second R&O and Further Notice, the Commission requests comment on a proposal requiring carriers submit reports on the number of complaints regarding unauthorized carrier changes.[35] The Commission believes this information will provide it with an "early warning" system to detect slammers and enable it to take investigative action in the most egregious cases.

C&W USA believes the information required by such a report could be deceptive as to which carriers were engaging in slamming and would result in proprietary information being disclosed to competitors. The number of consumer complaints concerning unauthorized changes a carrier receives is not an accurate indicator of its compliance with the Commission's rules since most incoming calls are quickly resolved and often do not result in a determination that an unauthorized switch has actually taken place. For example, consumers occasionally call carriers to accuse them of an unauthorized switch when they do not remember signing an LOA or accepting a third party verified telemarketing call, when they may be dissatisfied with their service, or if they want to fraudulently accuse the carrier of slamming in order to receive the mandated free service. Moreover, as discussed in Section II of these Comments, underlying carriers, such as C&W USA, are often wrongfully accused of slamming when a reseller improperly switches a customer due to the misidentification problems with carrier identification codes. This problem, along with the others mentioned, will generate consumer complaints to a carrier that do not accurately reflect the carrier's compliance

[35] Id. at 179.

with the Commission's rules. Reliance on this inaccurate information as an "early warning" system would not strengthen, and could misdirect, the enforcement of the Commission's rules.

VII. THE COMMISSION'S REGISTRATION REQUIREMENT AS PROPOSED IS UNNECESSARY AND BURDENSOME

C&W USA supports the Commission's goals of removing, or precluding entry to, fraudulent carriers in the interstate telecommunications market, but the proposed rule in the Second R&O and Further Notice is over-regulatory in that it may unjustifiably preclude legitimate new entrants to this marketplace and requires underlying facilities-based carrier to perform quasi-regulatory functions.[36] C&W USA would not oppose a registration requirement that grandfathers existing carriers, uses already public information to fulfill such a requirement, and does not mandate any new fee, ongoing reporting requirement, or regulatory duties on underlying carriers.

As proposed, the reporting requirement would raise barriers to entry and place a burdensome requirement on underlying facilities-based carriers. Requiring resellers to verify their financial viability could preclude new entrants to the interstate marketplace and could force the Commission to set a level of acceptable financial surety. Some switchless resellers that enter the market could not, in good faith, make such an assertion, thus precluding their entry into this market. The interstate telecommunications marketplace, when compared to the local, intrastate, and international markets, offers consumers a wide range of choices and competitive prices that are highly elastic. These

[36] See Second R&O and Further Notice, supra n.1, at 180.

consumer benefits are the result of the competition created by hundreds of providers, including the new resellers entering the market.

Requiring underlying carriers to perform quasi-regulatory functions by scrutinizing the registrations of their resellers is unnecessary and would be burdensome. If the Commission establishes a registration requirement for new entrants then carriers should not be delegated enforcement duties. Such functions would be difficult for the underlying carrier to enforce and could instigate complaints between carriers based on discriminatory treatment.

The Commission's goal of tracking switchless resellers and unscrupulous carriers can be achieved in more efficient manner than proposed in the Second R&O and Further Notice. The Commission could simply assign all carriers filing tariffs with the Commission a registration identification that can be used for its consumer protection and enforcement purposes. This registration identification would not require any additional fees or charges and could be used to properly track slamming complaints and other violations of the Commission's rules.

VIII. CABLE & WIRELESS USA SUPPORTS THE COMMISSION'S PROPOSAL FOR A THIRD PARTY ADMINISTRATOR FOR THE EXECUTION OF PREFERRED CARRIER CHANGES AND PREFERRED CARRIER FREEZES.

C&W USA supported the Commission's proposal for an independent third party to administer carrier changes and preferred carrier freezes in the Further Notice and Order[37] and reiterates its support for such an administrator in these Comments. The Commission correctly recognizes the motive and opportunity for LECs to abuse their responsibilities in executing PC changes and freezes. However, the cost of establishing

such an entity to execute all PC changes and freezes could significantly exceed the competitive protections provided. The Commission should first explore the option presented by the Telecommunications Resellers Administration ("TRA"), which proposed an administrator to monitor compliance and document execution of carrier changes and preferred carrier freezes. This entity could change from monitor to executor of these functions if anticompetitive behavior of the LEC was suspected or as a condition of RBOC entry into the interLATA market.

C&W USA also supports the Commission's proposal in the Second R&O and Further Notice for an independent third party to manage dispute resolution functions. C&W USA is actively working with other interested parties to develop a proposal suitable to the Commission, consumers, and affected carriers. These proposals will be made available to the Commission in a separate filing.

IX. CONCLUSION

C&W USA urges the Commission to recognize that LOAs delivered, completed, signed, and submitted through the Internet are in the public interest and are a valid means of verification. Additionally, C&W USA supports the proposals that resellers be identified by means other than an underlying carriers CIC and a third party administrator be explored for PC changes, freezes, and disputes. On the other hand, C&W USA requests the Commission reject its proposals to increase the liability for unauthorized changes, since the liabilities recently enacted have not gone into effect or been subject to scrutiny in other forums. Finally, the Commission should not expand the responsibilities

[37] See Comments of Cable & Wireless, Inc. at 4, Further Notice and Order, supra n. 28.

of independent third party verifiers or mandate carriers determine which agent of a business or household has the proper authority to make telecommunications decisions.

Respectfully submitted,

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